

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
AT&T Corp. Petition for Forbearance from)	
"Deemed Lawful" Provision of)	
Section 204(a)(3) of the Communications Act,)	
As Amended)	WC Docket No. 03-256
)	
)	

**COMMENTS OF
PAC-WEST TELECOMM, INC.,**

Pac-West Telecomm, Inc. ("PacWest"), through undersigned counsel, submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") December 24, 2003 Public Notice seeking comment on the AT&T Corp.'s ("AT&T") Petition for Forbearance of the "Deemed Lawful" Provisions of Section 204(a)(3) of the Communications Act, As Amended.¹ In its Petition,² AT&T requests that the Commission forbear from enforcing Section 204(a)(3) of the Communications Act, as amended (the "Act"), which provides that certain streamlined access tariff filings by local exchange carriers ("LECs") are "deemed lawful" upon either seven (7) or fifteen (15) days notice, depending upon type of rate changes involved.³ The Commission should deny AT&T's Petition because AT&T has failed to meet the standard for forbearance and the imposition of additional uncertainty is contrary to the public interest

In order to forbear, the Commission, pursuant to the requirements of Section 10(a) of the Act, must determine that: i) "enforcement of such regulation or provision is not necessary to

¹ *Pleading Cycle Established AT&T Corp.'s ("AT&T") Petition for Forbearance of the "Deemed Lawful" Provisions of Section 204(a)(3) of the Act*, WC Docket No. 03-256, Public Notice, DA 03-4076 (rel. Dec. 24, 2003).

² *AT&T Petition Pursuant to 47 U.S.C. Section 160(c) of the Communications Act for Forbearance from Enforcement of Section 204(a)(3) of the Communications Act, As Amended*, WC Docket No. 03-256 (filed Dec. 3, 2003) ("AT&T Petition").

ensure that the charges, practices, classifications, or regulations . . . are just and reasonable and are not unjustly or unreasonably discriminatory;” ii) “enforcement of such regulation or provision is not necessary for the protection of consumers;” and iii) “forbearance from applying such provision or regulation is consistent with the public interest.”⁴ The Commission must also determine whether forbearance will promote competitive market conditions and enhance competition among providers of telecommunications service.⁵

AT&T’s Petition does not satisfy the Section 10 forbearance standard. First, the intent of Section 204(a)(3) is to provide a streamlined, deregulated process for the filing of tariffs by LECs that provides certainty as to the lawfulness of their tariffs filed with the FCC. As the Commission and the DC Circuit have recognized, the text of Section 204(a)(3) make it clear that Congress knew that the “deemed lawful” portion of the provision would result in no damages being awarded for subsequent challenges to unsuspended tariffs filed under this provision.⁶ Indeed, it appears that Congress balanced the benefits of streamlining and deregulation for LECs tariffs with the resulting “deemed” lawful limitations on damages and decided that the benefits of streamlining and deregulation for these tariffs outweighed any harm from the damage limitations. If Congress believed that more regulatory oversight was needed to ensure that the “charges, practices, classifications, or regulations” of LEC access tariffs “are just and reasonable and are not unjustly or unreasonably discriminatory,” it would have clarified Section 204(a)(3) to that effect. In addition, the Commission can assure that rates are just and reasonable by requiring LECs to change tariffs on a prospective basis.

³ 47 U.S.C. § 204(a)(3).

⁴ 47 U.S.C. § 160(a).

⁵ 47 U.S.C. § 160(b).

⁶ See *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd. 2170, ¶¶ 18-19 (1997) (“*Streamlined Tariff Order*”); see also *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 409 (D.C. Cir. 2002) (“*ACS*”).

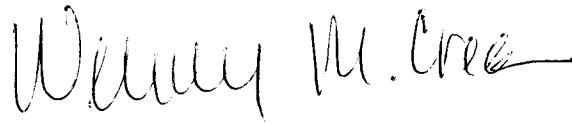
Second, contrary to AT&T's assertions, consumers are not harmed by this provision. Access tariffs filed under this provision are not automatically deemed lawful upon filing, but instead a streamlined notice period is specified during which access customers are given the opportunity to comment on the filing. The FCC may then review and suspend the effectiveness of the tariff, if necessary. Certainly it is difficult to accept any claims by access customers like AT&T that they do not have the ability to oppose a tariff filing within the notice period provided in Section 204(a)(3). Moreover, the fact that a streamlined procedure is used does not justify forbearing from this provision, as AT&T asserts. Rather, the streamlined procedures under this provision serve to benefit consumers by providing a deregulated environment in which carriers are allowed to quickly respond to competitive market conditions and to introduce new services without undue delay.

Finally, it would not be in the public interest for the Commission to subvert the regulatory certainty that Congress intended Section 204(a)(3) to provide. And, as noted, streamlined tariff provisions permit LECs to respond to customer needs and introduce new services quickly. These competitive concerns are of particular importance with respect to non-incumbent LECs like Pac-West who already face tremendous obstacles in their efforts to successfully compete with incumbent LECs ("ILEC") in the local exchange telecommunications market. A decision to forbear from application of Section 204(a)(3) would further prevent competitive carriers from quickly and effectively responding to market forces and instead would impose regulatory burdens that Congress did not believe was necessary even for incumbent carriers. Likewise, AT&T's Petition is primarily focused on ILECs, and, in particular, rate-of-return ILECs. Accordingly, Pac-West submits that to the extent that the FCC should decide to forbear from Section 204(a)(3), which it should not do, it should limit its application to access

tariffs filed by ILECs, and continue to allow competitive carriers to file under “deemed lawful” provisions of Section 204(a)(3) in order to ensure that competition and consumer benefits are not stifled by the imposition of additional regulatory burdens clearly contrary to the streamlined procedures implemented by Congress.

WHEREFORE, Pac-West Telecomm, Inc. respectfully requests that the Commission deny AT&T’s Petition for Forbearance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wendy M. Creeden", with a horizontal line extending from the end of the signature.

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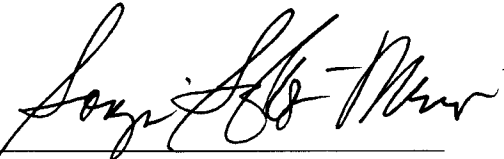
Dated: January 30, 2004

CERTIFICATE OF SERVICE

I hereby certify on this 30th day of January, 2004, that copies of the foregoing
Comments of Pac-West Telecomm, Inc.; Docket 03-256 were served via First-Class Mail,
U.S. postage prepaid or via Email* to the following:

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